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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203541
Party	Plaintiff Andre D. Rossouw
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Submission	Motion to Amend Pleading/Amended Pleading
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Attachments	Motion to amend Opposers objection to motion to compel.pdf(174280 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119

Mark: GOOGLEPLUS (GOOGLE +)

Andre Rossouw (Opposer)

vs.

Google Incorporated (Applicant)

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)
)
)
)

) Opposition No. 91203541

**MOTION TO AMMEND
PLAINTIFFS' RESPONSE TO MOTION TO COMPEL A DISCOVERY
RESPONSE TO INTERROGATORIES AND REQUESTS FOR
ADMISSIONS OF GOOGLE INCORPORATED.**

Amendment pertaining to applicants interrogations 21, 22, 25, 26 and requests for admissions 1, 3, 4, 5, 7-20, 24-31, 33-42, 44-46, 60, 61, 65-79, 83-90, as well as Production of Documents 27, 30-33, suggesting applicants reliance on the “ MOREHOUSE DEFENSE”.

It is that applicant Google Inc. apparently suggests that opposer should answer these requests that suggests their right to the “Morehouse Defense” in that opposer asserts the Morehouse Defense in this instance is not applicable due to the following reasons:

In General

1. The Morehouse defense calls for the newly applied mark “Google+ (Googleplus) to be significantly the same to applicants prior marks for the same services, which opposer asserts to be NOT the same at all being it all Google -formative marks have a different “commercial impression” and each have a total different meaning and different sound and spelling of it's own, including the actual “Google” mark, meaning “search engine”, The marks Google Buzz, Google Latitude and Google Currents which were Social Networks, also differed substantially in so much that these marks were used by applicant for the same thing, “Social Networking”. If applicant claims that these marks were not substantially different then applicant themselves would NOT have used them all being it would have been seen as most likely confusing the public. This includes the new mark Google+ (Googleplus) they are trying to Register. So it can not feasibly be said that applicant thought these marks to be all significantly the same. The fact that they all contain the mark “Google” is simply not enough by lawful conclusion OR Public's perception, to claim these marks are substantially similar and all or any particular one have the same “commercial impression” because they do not, and for that reason alone these marks then MUST be significantly different, for the public to differentiate between them.

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(2)

Therefore opposer asserts that the Google+ mark is neither substantially the same as any of these Google-formative marks being it has a completely different commercial impression than any Google-formative marks and in this instance is spelled and pronounced completely different than all Google-formative marks. For applicant to argue that the Google+ mark is one and the same mark as the Google mark, only with a "+" added to it is ludicrous. Because of the fore-mentioned facts.

2. Further the Morehouse Defense calls for opposers mark to not be able to suffer any further damage already caused by applicants previous uncontested marks. Opposer asserts that previous marks were not opposed by opposer for the service of Social Networking namely Google Latitude, Google Currents and Orkut, because opposer deemed those marks NOT confusingly similar to opposers mark except the mark "Google Buzz" that was never filed for Registration by applicant and was abandoned one year after it's introduction, and that opposer was not aware of the mark "Google Buzz" for at least 6-8 months after it's introduction, being it was never filed for Registration at all for opposer to see, and by which time opposer realized the marks existence, opposer waited for it's application to Register but instead the mark was announced abandoned by applicant. Opposer claims the Googabox mark was NOT harmed considerably by the Google Buzz mark due to it being abandoned soon enough. However the mark Google+ pronounced (Googleplus) and also presented by applicant as "Google Plus" is now damaging opposers mark in the most severe way by the two marks sounding overwhelmingly similar and applicants refusal to a seize and desist and continued promotion of the new mark in an utmost aggressive manner, thus this fact should also eradicate the Morehouse defense in this instance.

3. The issue here is 'first right of use and opposer claims 'first right of use" if the Board finds

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that the 2 marks sound too similar and in lieu of the fact that applicant MUST have been aware of opposers mark prior to choosing the Google+ (Googleplus) mark and the fact that opposer was Registered before all the marks of applicant that contained the "Google" mark within those marks. The mark ORKUT was presented as "By Google" and NOT a singular pronunciation "Googleorkut, as is the case of "Googleplus" Further Google Groups was never a mark "in se" but rather a descriptive presentation as people participating in various discussions and in different Groups (as in different topics of discussion) which now applicant, most likely because of this opposition is attempting to assert that Google Groups is a "form of Social Networking" so they could also rely on this apparent service as a "mark" that predates opposer. Opposer asserts that a "forum" is a round table whereby people discuss certain topics such as "Politics" "Cars" "technology" etc. and not Social "Networking" as is required when classing a service a "Social Network " as a Social Network is a service by which one promotes oneself, one's talents, business, service, or products etc. in an effort to be successful in such and gain notoriety. Thus Google Groups do not fall in this category. Further, the issue here is not whether applicant has a right to a Social Network, the issue is whether they have a "first right of use" for the mark Google+ (a new coined mark) In other words if applicant named their new Social Network "Google Social Network" they would have had a right of use as firstly that does not sound overwhelmingly similar to opposers mark Googabox and secondly no-one has exclusive right to the name "Social Network"

Opposer is requesting the BOARD to deem all requests by applicant suggesting the Morehouse Defense not applicable.

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So entered this day July 12th 2013

By Opposer
(Pro Se)



Andre Rossouw
(Googabox)
(Googabox.com)

Proof Of Service

I declare that:

I am over the age of eighteen years

I am the opposing party of Googabox (Googabox.com)

That I have:

*Served upon applicant by means of mutual agreement using “electronic” procedure
by sending a copy to applicant's e-mail address of record at the TTAB
at e-mail address “EBall@fenwick.com” and specifically to the attention of
Erik Ball (Counsel for applicant)*

Executed in Nashville, Tn

So stated under perjury as true and correct this day July 12th 2013 by opposer for opposer



Andre Rossouw (Googabox) (Googabox.com)